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No. 99-878

IN THE

**Supreme Court of the United States**

GEORGE W. and HARRIET M. CRAWFORD,
Petitioners,

v.

SIGNET BANK, ET AL.,
Respondents.

On Petition For Writ Of Certiorari
To The District of Columbia Circuit Court of Appeals

# PETITIONERS' REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Respondents' brief in opposition to the petition for writ of certiorari is replete with distortions and misrepresentations and necessitates the filing of this reply brief.

## DISTORTIONS AND MISREPRESENTATIONS

### Signet's Approved Appraiser List

Contrary to respondents assertion, page 15 footnote 15, the evidence in the record supports the Crawfords' conclusion that an appraisal must be performed by an appraiser from Signet Mortgage Corporation's approved appraiser list to be acceptable. The Joint Appendix in the D.C. Circuit Court contains several pages from the Signet Mortgage Corporation Product Manual. The only reference to appraisals is that they must be "SMC approved appraisers." In this same regard, Jack May, Signet's Senior Residential Appraiser, conferred with "two appraisers on the Signet Approved Appraiser's List." Respondents' Brief in Opposition at 12.

Signet's Approved Appraiser List is the only source of appraisers used by respondents for determining property value. The Crawfords submission of an appraisal performed by anyone not on Signet's list would have been unacceptable.

### The Washington Lawyers' Committee Report

Respondents argue that the Washington Lawyers' Committee Report concedes that it's analysis of Signet's and other lenders' Home Mortgage Disclosure Act data means nothing. The Lawyers Committee concludes that:

> The purpose of this study is not to prove that any particular lending institution has engaged in unlawful

> practices . . . All that can be said about the lenders . . . is that the racial disparities in underwriting and marketing raise serious fair lending concerns that require further investigation. All residents of the Washington, D.C. area have a right to know if their bank or mortgage company is involved in discriminatory practices.

The Lawyers' Committee concluded that specific facts, such as the Crawfords' facts, are needed to bring the statistics in its Report to life. The Lawyers' Committee Report supports the Crawfords' claim of mortgage lending discrimination by respondents.

**Signet Does Not Lend in LeDroit Park When the Property Value is More Than $200,000**

Respondents did approve six mortgage loans on the Crawfords' street. The properties, however, are located over a mile from the Crawfords' home, appraised for between $105,000 to $107,000, and were purchased by first-time homeowners for between $81,000 to $83,000. The houses are located in a group of 29 townhouses known as the Perry School Townhouses and developed by the North Capitol Neighborhood Development Corporation, of which Mr. Crawford is a member of the Board of Directors and Chairman of the Personnel Committee.

The record evidence proves that Signet and its appraisers will support a loan in a minority neighborhood so long as the property value is less than $200,000. When the value of the property in a minority neighborhood is more than $200,000, however, Signet and its appraisers intentionally suppress the property's value.

Signet appraiser James D. Donnelly performed an appraisal of 2300 First Street for Capital Bank and concluded that the property had a market value of $325,000. Donnelly, however, performed a retrospective appraisal of 2302 First Street for Signet and concluded that the Crawfords' home was valued at $195,000. Donnelly's conduct is consistent with the "plan" of Signet and appraisers on its "approved appraiser list" to lower the value of properties in minority neighborhoods when Signet is the lender.

The Crawfords refinanced their home in May 1998 with Bank of America. The appraiser for Bank of America concluded that the market value of the property was $315,000. The Court can take judicial notice that property values declined in the District of Columbia during the period of 1995 through 1998. Recently, December 29, 1999, the Crawfords obtained a second mortgage on their home and the property appraised for $320,000. The Court can also take judicial notice that property values have recently increased in the District.

**Property Values In the Crawfords' Block Are Based Upon Facts, Not Opinions**

Respondents misrepresent that the value of houses in the 2300 block of First Street are based upon the Crawfords' own opinion of the value of their house and the opinions of their neighbors concerning the value of their homes. This is not true. The market values of the houses in the Crawfords' block are not opinions offered by the homeowners. The property values are based upon appraisals performed by independent appraisers at the request of banks and savings and loans.

In addition to the Donnelly appraisal referenced above, there is also an appraisal in the record performed by an independent appraiser for a lender that estimates the value of 2316 First Street to be $275,000. Furthermore, the affidavit of Dr. Johanna Ferman is that she purchased 2315 First Street in 1988 for $279,000. All affidavits in the record are based upon facts. The values of the houses in the 2300 block of First Street are not based upon opinions from their owners as contended by respondents. The values are based upon appraisals performed by independent appraisers and the actual sales prices of the houses.

**The Word "Superior" and the Use of the Phrase "Superior Neighborhood"**

Respondents argue that their use of the word superior "simply means more expensive," and that other appraisers use the term superior in comparing neighborhoods. Brief in Opp., page 9 footnote 9. First, it is a question of fact whether respondents use of the word superior "simply means more expensive." The Crawfords, however, do not challenge the use of the word superior.

Fannie Mae Guidelines explicitly prohibit the use of the phrase "superior neighborhood." It is undisputed that the respondents used the phrase "superior neighborhood" in comparing Kalorama, a predominantly white neighborhood, to LeDroit Park, a predominantly African American neighborhood. Brief in Opp. at 8. Fannie Mae's prohibition on the use of the phrase "superior neighborhood" is just one Fannie Mae Guideline adopted to address discrimination that was violated by respondents. Respondents' assertion that the Crawfords imply that the word "superior" means white is erroneous and misplaced.

Second, Gaylord Curry, who was not an expert1 for the Crawfords, and Gaddie Jenkins did not use the phrase "superior neighborhood" when referring to the location of comparables. Specifically, Curry critiqued the Jenkins' appraisal and, in his opinion, concluded that "[t]his appraisal has utilized sales that are distant from the subject, and which most knowledgeable appraisers would consider in specific locations that are superior to the subject's." The Jenkins' appraisal, on the other hand, does not contain a single use of the word "superior." It is unclear why respondents would proffer arguments unsupported by the record.

**Curry's Critique of Appraisals**

Gaylord Curry critiqued several of the appraisals in this case. In his report he wrote that because the Popkin appraisal incorrectly indicated the above grade area of comparable property, "[t]hese obvious inconsistencies border this report on fraud." The truth of the matter, however, is that Curry found fault with all appraisals except for the Blake appraisal. Curry concluded that:

> Based upon my experience in this market area, it appears to me that only the appraisal accomplished by Mr. Blake [$225,000 in 1989] appears reasonably reliable as a value indicator of the subject at the time it was accomplished. Neither of the others appear strongly reliable as to the value of the subject property, and its value in [April] of 1994 was most likely something above the Blake appraisal, but less

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1 The Crawfords designated two (2) expert witnesses in this case, Dr. Calvin Bradford and John May, Jr. See Petition for Writ of Certiorari, Appendix D, Memorandum Opinion, p. 21, note 17.

than the others [$340,000].

Based upon subsequent appraisals, Popkin was vindicated.

**The NVR Mortgage Appraisal**

The June1992 appraisal ($235,000) performed for NVR Mortgage was nearly two years before the Crawfords completed the rehabilitation of their home. When viewed in comparison with the Popkin ($340,000) and Thomas ($337,000) appraisals, performed after rehabilitation was completed, the 1992 appraisal is not relevant to establishing the value of the Crawfords' home.

**Mr. Crawford's Occupation as An Attorney**

The fact that Mr. Crawford is an attorney is irrelevant and immaterial and an attempt by respondents to distract the Court's attention from the real issues. The facts and circumstances surrounding the Crawfords' changing of attorneys and Mr. Crawford's representing his family in this matter is also immaterial. The respondents insinuate that the Crawfords' changing of attorneys and Mr. Crawford's role in this litigation should, in some way, affect the merits of the case. Or, are respondents of the view that justice is only available for parties represented by influential law firms.

**There is Discord Among the Circuits**

The D.C. Circuit pointed out that the Seventh Circuit concluded that the McDonnell Douglas framework is not available in a mortgage discrimination suit. Nevertheless, the D.C. Circuit applied the McDonnell Douglas framework. The Eighth Circuit has also applied McDonnell Douglas.

## CONCLUSION

Mortgage lending discrimination based upon the race of the applicant, or the location of the property to be financed, is a serious problem in the United States. Mortgage lending discrimination is demoralizing and devastating to the individuals discriminated against, wrecks havoc on federal policies to stabilize urban and minority neighborhoods, and has negative economic impacts on society as a whole.

Respondents' discriminatory lending practices create urban blight, destroy minority neighborhoods, and results in the decline of the Nations Capital. Respondents undervaluing of properties in LeDroit Park does not allow the neighborhood to prosper and denies residents the equal opportunity to fully experience and enjoy the American dream of homeownership.

Notwithstanding the convoluted arguments offered by respondents, the genuine issue of material fact is whether the evidence would support a finding that the Crawfords' were qualified for the loan? In addition, there is discord among the circuits.

The petition should be granted.

Respectfully submitted,

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